Beatty v. *Kurtz*, 2 Pet. (U. S. Sup. Ct.) 566, and *Cincinnati* v. *White*, 6 Ibid. 431, the court placed its decision upon this *dictum*, which it regarded as the *ratio decidendi* of the earlier case. The rights in question related to burial grounds and to a park, and the decisions of the court accordingly extended dedication to such subject matter. The old doctrine in regard to grants for the establishment of a church, it is true, is in one respect analogous to dedication, in that the recipient of the beneficial rights is in both cases incapable of taking the legal title to the property; and that seems to be the sole force of the *dictum* in *Pawlett* v. *Clark*, *supra*.

The subject has been recently brought to notice by a Vermont case. The facts were in general similar to those in *Pawlett* v. *Clark*, *supra*, except that the purpose of the donation was to establish a cemetery instead of a church. Here it was decided that a charitable trust had been created. *Hunt* v. *Tolles*, 52 Atl. Rep. 1042. The decision is clearly correct, for here there was a writing sufficient to establish a trust within the Statute of Frauds; but the court, by citing as the chief authority *Beatty* v. *Kurtz*, *supra*, where there was no such writing, shows a failure to distinguish between a dedication and a charitable trust.

Even supposing that a writing had been lacking in the principal case, the court must have reached the same conclusion. For when the people have buried their dead with the acquiescence of the owner of the land, it would be a shocking decision which would recognize no public rights therein. A ground broad enough to support all such cases, including even those where there is no writing on which to base a charitable trust, is found in the principles of equitable estoppel. A few courts have said that dedication itself is but an application of these principles. See *Cincinnati* v. *White*, *supra*. But this view has been strongly opposed by some text-writers. See ANGELL, HIGHWAYS, § 156. And since the acts necessary to show the intent to accept the dedication would often not be such as to furnish ground for equitable estoppel, the criticism seems just. Dedication correctly understood is a method of transferring interests in realty, peculiar to itself because of the anomalous character of the recipient of the rights. See 14 HARV. L. REV. 65. Equitable estoppel is quite another matter. It arises when a man by his conduct has acquiesced in the actions of others until they have placed themselves in such a position that it would be unjust and unconscionable for him to exercise his full legal rights. This principle has already been clearly recognized and applied to the class of cases under discussion; *McClain* v. *School Directors*, *etc.*, 51 Pa. St. 196; and see *Shroder* v. *Wanzor*, 36 Hun (N. Y.) 423. It also underlies a similar class where a parol promise to convey realty within the Statute of Frauds is enforced because of a consequent change of position by the promisee in regard to the land. See 15 HARV. L. REV. 157. A careful discrimination between the principles governing grants for the establishment of churches, dedication, charitable trusts, and equitable estoppel, would lead to a more satisfactory condition of the law.

VESTED RIGHTS IN THE DEFENSE OF THE STATUTE OF LIMITATIONS. — The degree of protection afforded defenses to an action by the provision of the Fourteenth Amendment that no state shall "deprive any person of property without due process of law," and by the similar provisions in the state constitutions, has not yet been fully determined. The theoretically correct

rule would seem to be that a fully matured defense cannot be destroyed by legislative enactment, since the practical result of such action would be the taking of property previously free. Important modifications, however, have been made by the courts. A wise and necessary, though not strictly defined, exception is found in remedial legislation; defenses based not on any equity in the defendant, but purely on informalities and technical mistakes, can be removed when justice demands it. *Danforth* v. *Groton Water Co.*, 178 Mass. 472. Certain other cases which may be regarded as forming a second exception, arise when the legislature has provided remedies for rights which had been lying dormant. *Hewitt* v. *Wilcox*, 42 Mass. 154; *Ewell* v. *Daggs*, 108 U. S 143. In the former of these cases the court held that the repeal of a statute which had barred unlicensed physicians from recovering fees, authorized recovery for past services. In cases of this sort the defense is based not on any equity of the defendant but on a disqualification of the plaintiff; and it would be going far to say that there is a vested right in such a defense. A third exception has been made by the United States Supreme Court in holding that a legislature can constitutionally remove the bar of the statute of limitations on contract claims. It is argued that the statute bars only the remedy — as is shown by the revival of the obligation under a new promise — and that this artificial defense can be removed by the same power that created it. *Campbell* v. *Holt*, 115 U. S. 620. Influenced by this case and by a desire to obtain "substantial justice," the Massachusetts Court in a recent case holds constitutional an act extending the period of limitation, after the original period had expired, on claims against a railroad for damages caused by a change of grade. *Dunbar* v. *Boston & P. R. Corp.*, 63 N. E. Rep. 916 (Mass.).

It is submitted with deference that these two cases carry too far the exceptions to the rule that a matured defense cannot be destroyed by the legislature. The legislation in these cases cannot be called remedial, since no merely technical mistake or evident injustice was involved; it was only the expression of a doubtful change of policy on the part of the legislature. The distinction between these cases and those represented by *Hewitt* v. *Wilcox*, *supra*, is brought out by comparing the different policies underlying the statutes which created the defenses. In the latter the object was not to free patients from the obligation to pay their bills, because of any right on their part, but to prevent unlicensed physicians from practicing. In the former the statute recognizes a right in the debtor arising from the lapse of time, and is based on that as well as on the delay and negligence of the creditor. It is conceded that the title to property given by the statute cannot be impaired. *McEldowney* v. *Wyatt*, 44 W. Va. 711, 45 L. R. A. 609. In the case of contract rights the party originally at fault has had no opportunity to acquire title, but he has gained a real right to have existing conditions remain unchanged. Again, it is argued that the defense of the statute simply gives an opportunity to escape from a just debt. If a defense mainly produces injustice, the legislature should abolish it for the future. But the statute of limitations cannot be so regarded; it certainly operates as justly in freeing debtors as in giving title to thieves, — a result generally approved.

The courts might have confined themselves to the support of strictly remedial legislation. Since they extend their support of the legislatures beyond that, it would seem wise to make the test the existence of a positive right in the defendant, as distinguished from a mere lack of a remedy in

the plaintiff. It is submitted that such a test would place the defense of the statute of limitations in all classes of cases under the protection of the constitution.

JUDGMENT OR SATISFACTION: WHICH PASSES TITLE? — There has been much confusion as to whether title to a chattel in an action of trover or trespass for its value passes on judgment, or only on satisfaction of that judgment, and it is usually attempted to lay down a rule on the subject dogmatically one way or the other. There seems to be little recognition that title in fact vests sometimes on satisfaction and sometimes on judgment, and that it may well be doubted whether either circumstance goes sufficiently to the essence of the matter to make a rule on the point necessary. A recent decision in Pennsylvania deciding that under the circumstances of that case title passed on judgment makes it interesting to look into the question. *Singer Co.* v. *Yaduskie*, 59 Leg. Intell. 367, 11 Pa. Dist. Ct. Rep. 571.

The confusion arises largely from a failure to notice that there are two classes of cases, namely, the class where the judgment in question is against him who at the time of judgment has the chattel in possession, and the class where it is against him who at the time of judgment does not have it in possession. Suppose A is wrongfully dispossessed of a chattel by B, he has the option of bringing either replevin or detinue to recover the possession, or trespass or trover to recover its value, in which latter event he leaves the possession where it is. Whichever action he brings, by the rule of *res judicata*, from the moment of judgment he is barred against bringing any further action against B for the same wrong. *Rembert* v. *Hally*, 10 Humph. (Tenn.) 513. If at that moment B happens to be in possession of the chattel, since the only person in all the world who could legally have deprived him of it is now barred, B has virtual ownership. *Barb* v. *Fish*, 8 Blackf. (Ind.) 481, 485–6. The chattel becomes liable to seizure on execution for B's debts. *Rogers* v. *Moore*, Rice (S. C.) 60. And since he has possession coupled with unlimited right of possession, which is equal to title, a purchaser from him ought to get a perfect title. See 3 HARV. L. REV. 326. Here, as is seen, B at the time of judgment had possession of the chattel, and title therefore passed on judgment. This represents the first class of cases. In them title should always pass on judgment. And the principal case, which falls into this class, would therefore seem to be correct.

But suppose B, before judgment rendered and title thus acquired, passes the chattel to C. Surely C gets no greater right than B had, and A acquires an immediate right to recover against him also. Nor is A's right of action against C barred, or his title to the chattel affected, by a subsequent judgment obtained against B; for the rule of *res judicata* applies only when the parties are the same in both suits. There are only two ways in which A's title can be affected: one is by a judgment against C, which would throw the case into the first class, and title would therefore pass upon judgment; the other is by satisfaction of the judgment against B. In this latter case a new rule would come into play, namely, that one should not be twice recompensed for the same injury, so that C would be freed from action by A. C therefore would get title as against A, and, if B had no claims, title as against all the world. Title would pass on satisfaction. This represents the second class of cases, and in this class are found most of the authorities